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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/727,769	12/04/2003	Noel Mascarenhas	06078/231001	7590

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EXAMINER

STERLING, AMY JO

ART UNIT PAPER NUMBER

3632

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/727,769

Applicant(s)

MASCARENHAS ET AL.

Examiner

Amy J. Sterling

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15,22 and 23 is/are pending in the application.
- 4a) Of the above claim(s) 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15,22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This is the **Final Office Action** for application number 10/727,769 Swing Down Fuel Tank Bracket, filed on 12/4/03. Claims 1-15, 22 and 23 are pending. This **Final Office Action** is in response to applicant's reply dated 11/8/06. Text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

### ***Election/Restrictions***

Newly submitted claim 23 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The addition of the hydraulic device is considered a separate invention than the cradle that was originally presented. The examiner will rejoin claims if the applicant will insert a statement that admits that these devices are obvious permutations of the gas spring. The claims are considered withdrawn in this action and the withdrawal is considered FINAL.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 23 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Claim Rejections - 35 USC § 102***

Claims 1-4, 8-10 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 5845940 to Colburn.

Colburn teaches a frame means (26) immovably mounted on a forklift truck vehicle, a means for supporting the fuel tank disposed on the tank bracket including a cradle (64) operatively connected to the frame, a means for rotationally maneuvering the means for supporting which is a hinge (46) that pivotally connected a first end of the cradle to a first end of the frame and a means for reliably engaging the means for supporting and a means for securing the tank bracket to the means for supporting which includes a latch (52) having a first portion disposed on a second end of the frame and a second portion disposed on a second end of the cradle, wherein the first portion of the latch is releasably engaged with the second portion of the latch, wherein after the latch is disengaged, the cradle is rotatable between a retracted position where the cradle is positioned substantially parallel to the frame and to the upper surface of a means for balancing which is the counterweight of the forklift truck which is a spring (56) and a means for damping (60) operatively connected between the frame and the cradle, the spring and damper both which retard rotational motion, and the cradle moves to an extended position wherein the cradle is positioned at an angle to a side surface of the counterweight, the cradle extendable in a single stage such that the second end of the cradle traverses an uninterrupted arcuate path, wherein the cradle may be maneuvered between the retracted position and the extended position by simultaneously rotating outwardly and downwardly to an angle of about 40 degrees in relation to the vehicle and

an alignment pin (42), the means for balancing moving along a trajectory substantially similar to the trajectory traversed by the means for supporting, which the means for supporting is maneuvered from a retracted position to an extended position.

***Claim Rejections - 35 USC § 103***

Claims 5-7 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 5845940 to Colburn as applied to claim 1 above and further in view of United States Patent No. 66637706 to Kim et al.

Colburn teaches the basic inventive concept including teaching a spring (56) with a motion damper (60) and a clamp (38) for holding the fuel tank to the bracket.

Colburn does not teach that the spring is a gas spring or that the cradle has straps for holding the bracket.

Kim et al. teaches a fuel tank cradle (10) which has a gas spring (50) for retarding the motion of the cradle and straps (46) for holding the fuel tank to the bracket. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to have used a gas spring and straps in order to retard motion and to secure the fuel tank to the cradle.

***Response to Arguments***

The applicant has argued that Colburn does not show that the motion of the cradle is in one single uninterrupted stage because it moves upward first to a neutral

Art Unit: 3632

position before descending to the lower portion of the arcing trajectory. This is unpersuasive in that without further description of what is meant by an uninterrupted stage, the limitation is still met by the motion as taught by Colburn. Also, the remainder of the motion is considered an uninterrupted arcing motion as described by the specification.

All other arguments are moot either due to the new grounds of rejection or withdrawn rejections.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The fax machine number for the Technology center is 571-273-8300 (formal

Art Unit: 3632

amendments) or 571-273-6823 (informal communications only). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

A handwritten signature in black ink, appearing to read "Amy J. Sterling". The signature is written in a cursive, flowing style.

Amy J. Sterling  
Primary Examiner  
1/3/07